

EXHIBIT 1

THE SUPREME COURT OF WASHINGTON

IN RE THE PERSONAL RESTRAINT
PETITION OF

DAROLD RAY STENSON, a/k/a DAROLD
R.J. STENSON,

Petitioner.

NO. 82332-4

ORDER

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV 19 A 10:39
BY RONALD J. CAMPBELL
CLERK

This matter came before the Court [Justice Owens recused] on November 18, 2008, for consideration of Petitioner's Personal Restraint Petition as well as the Petitioner's Opening Brief in Support of Personal Restraint Petition, and Memorandum in Support of Motion for Stay of Execution, RAP 16.9 Response to Personal Restraint Petition, and Response to Motion for Order Enjoining Execution, Amicus Curiae Briefs from the ACLU and ACLU of Washington, Washington State Bar Association, and the Murder Victims' Families for Reconciliation, and the State's Response to Amicus Curiae Briefs; the Court being fully advised and having determined, by majority, that the following order should be entered:

Now, therefore, it is hereby

ORDERED:

That Petitioner's Personal Restraint Petition is denied pursuant to the provisions of RCW 10.73.090 and .100 as a successive petition (the Petitioner's fourth Personal Restraint Petition). Petitioner's Motion for Stay of Execution is also denied. Dissents to this order will be filed separately.

DATED at Olympia, Washington this 19th day of November, 2008.

For the Court

Glenn L. Alexander
CHIEF JUSTICE

547/16

EXHIBIT

In re PRP of Darold R. J. Stenson

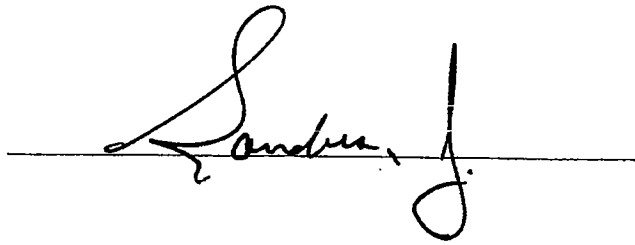
No. 82332-4

SANDERS, J. (dissenting)—After a day of unrelated oral arguments, this Court convened at approximately 3 p.m. on November 18, 2008, to consider Darold R. J. Stenson's personal restraint petition and request for a stay of his execution, set for December 3, 2008. Briefs had previously been circulated; however, due to an administrative oversight, Mr. Stenson's Opening Brief was first circulated less than 24 hours prior to our conference. I moved to stay the execution date to provide more time for careful consideration while still giving Mr. Stenson a reasonable opportunity to seek alternative relief in the event this Court did not act favorably on the merits.

Unfortunately, that stay was denied by majority vote. I then voted on the merits to grant the stay, grant the PRP, and hear oral arguments based on the claims and authority set forth in that Opening Brief. But the majority voted otherwise. I dissent. We need not rush to execution under these circumstances.

No. 80759-1

I dissent.

A handwritten signature, appearing to be "Sandra J.", is written over a horizontal line. The signature is in cursive and includes a period at the end.

In re Personal Restraint Petition of Darold R.J. Stenson

No. 82332-4

STEPHENS, J. (dissenting)—The majority today denies Mr. Stenson's motion for a stay of execution and dismisses his personal restraint petition under a procedural rule barring successive petitions. In so doing, it necessarily regards his state constitutional claims as having been previously rejected. *See In re Pers. Restraint of Greening*, 141 Wn.2d 687, 699, 9 P.3d 206 (2000) (recognizing a successive petition is one that renews claims previously heard and determined on the merits).

Yet, this Court has never addressed the merits of Mr. Stenson's claims under Washington Constitution article I, sections 13 and 14. Prior dismissals, like today's refusal to hear this petition, were based on procedural rules. *See In re Pers. Restraint of Stenson*, 153 Wn.2d 137, 144 & n.3, 102 P.3d 151 (2004). Moreover, the factual basis for considering the present issues is before the court for the first time today. I am of the view that, before we may invoke a procedural rule to refuse to hear the merits of a significant constitutional issue that could result in

In re Personal Restraint Petition of Darold R.J. Stenson, 82332-4 (Stephens, J. Dissent)

prohibiting the imposition of a death sentence, the bar to review upon which we rely must be clear and unavoidable.

I find no clear and unavoidable bar to review in this case. Mr. Stenson's petition arguably falls within recognized exceptions to late-filed personal restraint petitions under RCW 10.73.100. At a minimum this justifies a stay to fully consider the arguments raised in Mr. Stenson's petition.

Like Justice Sanders, I fail to understand the rush to execution under these circumstances. I respectfully dissent.

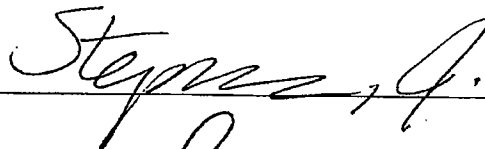
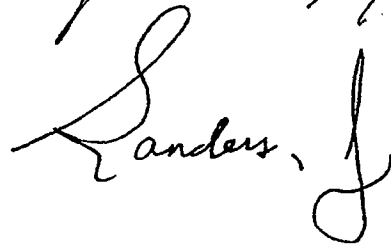



EXHIBIT 2

THE SUPREME COURT OF WASHINGTON

DAROLD R.J. STENSON,

Petitioner,

v.

ELDON VAIL, et al.,

Respondents.

ORDER

Supreme Court No.
82197-6

This matter came before the Court on its November 6, 2008, En Banc Conference and a majority of the Court [Justice Owens recused] having determined that the following order should be entered:

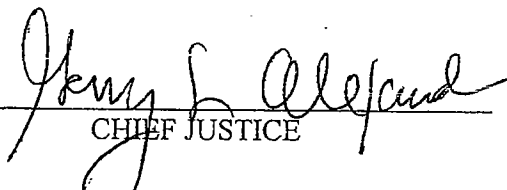
Now, therefore, it is hereby

ORDERED:

That the Original Action Against State Officers for Writ of Prohibition and/or Mandamus, the Motion for Oral Argument, and the Motion for Stay are all denied.

DATED at Olympia, Washington this 7th day of November, 2008.

For the Court,


CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV - 7 10A 13
CLERK
BY RONALD R. CARPENTER

545/176

EXHIBIT

2

EXHIBIT 3

☐ EXPEDITE
☒ No hearing set
☐ Hearing is set

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity); STEPHEN SINCLAIR,
Superintendent of the Washington State
Penitentiary (in his official capacity);
MARC STERN, Director of Health
Services (in his official capacity);
CHERYL STRANGE, Office of
Correctional Operations Deputy Secretary
(in her official capacity); WASHINGTON
DEPARTMENT OF CORRECTIONS; and
DOES 1-50,

Defendants.

No. 08-2-02080-8

FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Darold R. J. Stenson, by and through his undersigned attorneys for his complaint
against the above-captioned Defendants, alleges as follows:

FIRST AMENDED AND SUPPLEMENTAL
COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF – 1

68695-0001/LEGAL14833831.1

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EXHIBIT 3

I. NATURE OF ACTION

1. Plaintiff Darold R. J. Stenson brings this action for declaratory and injunctive relief for violations and threatened violations of his right, under the Washington Constitution, art. I, §§ 14 and 3 of the Washington Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution to be free from cruel and unusual punishment and arbitrary and capricious action caused by the State of Washington's Department of Corrections ("DOC") protocols, procedures and/or actions.

2. Plaintiff is under a sentence of death imposed by the State of Washington. The State of Washington has elected to use lethal injection as the presumptive method of execution, and DOC has implemented a policy by which it plans to carry out lethal injections in the State. A death-sentenced inmate in the State of Washington may elect death by hanging.

3. Plaintiff does not in this action challenge his underlying conviction or sentence. Rather, Plaintiff challenges the manner and means by which DOC intends to execute him under its former policy, DOC Policy Number 490.200 (dated June 21, 2007) (the "Policy"), attached to Plaintiff's Complaint as Exhibit A, or its amended policy, dated October 25, 2008, which was revised after Plaintiff initiated this action and is attached as Exhibit A hereto, and any other policy, protocol, or other guideline or practice addressing the method of execution in Washington. Methods of lethal injection that would comply with the United States and Washington constitutions exist and are available for Defendants' use.

4. Lethal injection, as that method of execution is currently administered in Washington under the Policy, unnecessarily risks the infliction of torturous pain and suffering. The nature of the chemicals used by Defendants to effectuate execution by lethal injection, coupled with Defendants' failure to implement sound procedures and guarantee

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
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1 the use of properly-trained and qualified personnel, unnecessarily risks and creates a highly
2
3 foreseeable probability that Plaintiff will experience excruciating pain and suffering during
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5 execution.

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7 5. The alternative elective method of execution, death by hanging, is also
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9 unconstitutional under the constitutions of the State of Washington and United States
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11 because it unnecessarily risks and creates a highly foreseeable probability that Plaintiff will
12
13 experience excruciating pain and suffering during execution.

14
15 6. Furthermore, Defendants' failure to provide a complete set of the execution
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17 procedures and an opportunity for Plaintiff to review and object to those procedures violates
18
19 due process and fundamental fairness guaranteed by the constitutions of the State of
20
21 Washington and United States.

22
23 7. In implementing and modifying the Policy, Defendants have not acted
24
25 pursuant to any authority, and/or any proper authority, granted to them by the Washington
26
27 Legislature.

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29 8. Defendants have not been given by the Legislature, nor have they
30
31 promulgated, sufficient procedural standards, safeguards or guidelines for the
32
33 implementation or modification of the Policy or to test the constitutionality of these actions
34
35 after promulgating the Policy or other critical guidelines or practices for implementing the
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37 death penalty.

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39 9. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
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41 carrying out his execution by means of lethal injection, as that method of execution is
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43 currently performed in the State of Washington.

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FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 3

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1 10. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
2 carrying out his execution by means of hanging, as that method of execution is currently
3 performed in the State of Washington.
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7 11. Plaintiff seeks declaratory and injunctive relief to restrain DOC from carrying
8 out his execution under the Policy and procedures which currently exist.
9

10
11 12. Plaintiff seeks declaratory and injunctive relief to restrain DOC from
12 implementing an execution policy which it has enacted without proper legislative authority
13 or sufficient procedural standards, safeguards or guidelines and without any mechanism for
14 review to prevent arbitrary action and an abuse of discretion and to allow testing of the
15 Policy for constitutional sufficiency, arbitrariness or other legal insufficiency.
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20 21 II. JURISDICTION AND VENUE

22
23 13. This Court has jurisdiction pursuant to RCW § 7.24 *et seq.* (declaratory
24 judgments) and RCW § 7.40.010 *et seq.* (injunctive relief). This action arises under the
25 Washington Constitution, art. I, §§ 3 and 14, and the Eighth and Fourteenth Amendments to
26 the United States Constitution.
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31 14. Venue is proper in this county pursuant to Wash. Rev. Code § 4.92.010,
32 because the cause of action, or some part of it, has occurred and will occur in this county as
33 part of the official business of the DOC and the individual defendants are named herein in
34 their official capacity.
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38 39 III. THE PARTIES

40
41 15. Plaintiff is a United States citizen and resident of the State of Washington.
42 He is currently a death-sentenced inmate in the custody of Defendants and under the
43 supervision of the DOC (DOC number 232018). He is held at the Washington State
44 Penitentiary, 1313 N. 13th Ave, Walla Walla, Washington 99362.
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FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 4

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16. Defendant Eldon Vail is the Secretary of the DOC, with the responsibilities outlined in RCW § 72.09.050, and is sued in his official capacity.

17. Defendant Stephen Sinclair is the Superintendent of the Washington State Penitentiary where Plaintiff is housed and where all executions in Washington are performed, and is sued in his official capacity.

18. Defendant Marc Stern is the Director of Health Services for DOC, and is sued in his official capacity.

19. Defendant Cheryl Strange is the Deputy Secretary for the Office of Correctional Operations, and is sued in her official capacity.

20. Defendant Washington Department of Corrections is a department of the State of Washington created by RCW § 72.09.030, and is responsible for administering the adult corrections programs operated by the State of Washington pursuant to RCW § 72.09 *et seq.*

21. Defendants Does 1-50, are the DOC's officers, successors in office, agents, contractors, and employees, along with those acting in concert with them, who have or will participate in Plaintiff's execution by virtue of their roles in designing, implementing, preparing for, and/or carrying out the lethal injection process. Plaintiff does not yet know the identities of these persons, but will amend his complaint accordingly upon obtaining that information.

IV. BACKGROUND

22. Plaintiff was convicted and sentenced to death in 1994.

23. No execution date is set.

24. On April 16, 2008, the United States Supreme Court issued its decision in *Baze v. Rees*, ___ U.S. ___, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008), in which a plurality of

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
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1 the Court held that the Eighth Amendment to the United States Constitution is violated when
 2 the State subjects an individual to conditions presenting the risk of future harm that are
 3 likely to cause serious illness and needless suffering and give rise to sufficiently imminent
 4 dangers.
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 9 25. The State of Washington's methods of execution create a substantial risk of
 10 serious harm and wantonly expose death-sentenced prisoners to objectively intolerable risks
 11 of harm for purposes of Article I, § 14 of the Washington Constitution, and the Eighth
 12 Amendment to the United States Constitution.
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 17 26. Alternatives to the State's methods of execution exist that effectively address
 18 the substantial risk of serious harm posed by the State's current methods and that are
 19 feasible, readily implemented, and in fact significantly reduce a substantial risk of severe
 20 pain. The State lacks a legitimate penological justification for adhering to its current
 21 methods of execution. By refusing to adopt the available constitutionally sufficient
 22 procedures, the State is violating the prohibitions on cruel and unusual punishment set forth
 23 in Article I, § 14 of the Washington Constitution, and the Eighth Amendment to the United
 24 States Constitution.
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33 V. GENERAL ALLEGATIONS

34
 35 27. All prior allegations set forth above are re-alleged as if set forth entirely
 36 herein.
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39 A. Lethal Injection

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 41 28. The State of Washington has elected to use lethal injection as the
 42 presumptive method of execution. *See* RCW § 10.95.180(1). Under state law, death
 43 sentences "shall be supervised by the superintendent of the penitentiary and shall be inflicted
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FIRST AMENDED AND SUPPLEMENTAL
 FOR DECLARATORY JUDGMENT AND
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1 by intravenous injection of a substance or substances in a lethal quantity sufficient to cause
 2 death and until the defendant is dead.” *Id.* A defendant may elect death by hanging. *Id.*

3
 4 29. The statute prescribes no specific drugs, dosages, drug combinations, or the
 5 manner of intravenous line access to be used in the lethal injection execution process.
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 8 30. The statute fails to prescribe any certification, training, or licensure required
 9 for those individuals who participate in the execution process.
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11
 12 31. Though the statute does not delegate to DOC or any agency the authority to
 13 establish or implement execution policies and fails to set forth any administrative or
 14 procedural standards safeguards or guidelines to be followed when enacting policy or
 15 otherwise acting to implement the statute, all of the details and methods involved in the
 16 execution process have been determined by DOC and at DOC’s sole discretion.
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18
 19 32. The Policy sets forth the protocol by which the DOC has determined that
 20 lethal injections are to be carried out in the State of Washington.
 21

22
 23 33. On information and belief, DOC intends to execute Plaintiff by the lethal
 24 injection procedure as set forth in the Policy. The Policy, and the manner and means by
 25 which lethal injections are currently performed, violate state and federal constitutional
 26 provisions that prohibit cruelty, pain, and torture.
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 29 34. On information and belief, the lethal injection protocol set forth in the Policy
 30 was adopted without sufficient medical research or review to determine that an inmate
 31 would not suffer a painful death.
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 34 35. The execution protocol set forth in the Policy was adopted without complying
 35 with any administrative or procedural standards, safeguards or guidelines.
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B. The Chemicals Chosen by DOC for Lethal Injection Create an Excessive Risk That Plaintiff Will Suffer Excruciating Pain During Execution

36. The Policy creates a substantial risk that Plaintiff will consciously experience pain and suffering during execution. Pursuant to the Policy, an "injection team" whose members, titles and qualifications are undefined by the Policy, will administer intravenously a three-drug combination to Plaintiff in the following order: (1) thiopental sodium; (2) pancuronium bromide; and (3) potassium chloride.

1. Thiopental Sodium

37. Thiopental sodium, the first drug to be administered, is an ultra-short acting anesthetic intended to cause temporary unconsciousness, the effects of which wear off quickly. If a sufficient dose of thiopental sodium is not administered properly, the sedative effect will wear off during the execution process, creating a substantial constitutionally unacceptable risk of suffocation from the administration of the subsequently-administered pancuronium bromide and pain from injection of the subsequently-administered potassium chloride.

38. Failure to administer properly the entire dose of thiopental sodium necessary to prevent unconstitutional suffering is a foreseeable consequence of the inadequacy of DOC's procedures and training as outlined in the Policy. Proper administration of thiopental sodium sufficient to render an adequate depth of unconsciousness is crucial to render the execution humane because the subsequently-administered drugs cause excruciating pain and suffering if injected into a conscious or inadequately sedated person. If not fully anaesthetized when injected with the pancuronium bromide and the potassium chloride, Plaintiff will experience both conscious paralysis and asphyxiation and an excruciating burning feeling throughout his veins before dying from cardiac arrest.

1 39. The Policy provides that a solution of thiopental sodium will be used in the
2 lethal injection procedure and states that solutions for injection will be prepared no more
3 than thirty minutes prior to administering them in the execution. The Policy does not outline
4 how the drug will be prepared, or by whom, nor does it reasonably assure that the personnel
5 who will prepare and deliver the thiopental sodium have adequate training and experience to
6 perform these tasks properly and to do so within the thirty-minute time constraint. On
7 information and belief, other states use licensed pharmacists or physicians to mix the drugs,
8 including thiopental sodium, for lethal injections.
9

10 40. DOC has chosen to create a substantial and foreseeable risk that Plaintiff will
11 be conscious during the administration of the pancuronium bromide and potassium chloride
12 by electing to use thiopental sodium. Anesthesiologists typically administer thiopental for
13 purposes of temporarily anaesthetizing patients in order to introduce a breathing tube. Once
14 the breathing tube has been inserted, other longer-lasting barbiturates are administered to
15 maintain the patient at a surgical plane of anesthesia throughout the procedure.
16

17 41. The American Veterinary Medical Association (AVMA) recommends the use
18 of a long-acting barbiturate such as sodium pentobarbital in euthanasia, rather than the
19 thiopental sodium used in Washington executions of death-sentenced prisoners. See
20 American Veterinary Medical Association, *AVMA Guidelines on Euthanasia (Formerly*
21 *Report of the AVMA on Euthanasia)* (June 2007) at 11, available at
22 <http://www.avma.org/issues/animal_welfare/euthanasia.pdf>, last visited August 18, 2008.
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30 2. Pancuronium Bromide

31 42. After the thiopental sodium, Defendants intend to administer 100 milligrams
32 of pancuronium bromide. Pancuronium bromide is a neuromuscular blocking agent that
33 paralyzes all voluntary muscles, including the respiratory muscles, thereby causing
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1 asphyxiation. Pancuronium bromide does not diminish cognition, consciousness, or the
 2 ability to feel pain or suffocation. As a result, if an individual is not fully unconscious when
 3 pancuronium bromide is administered, that person will experience the physical and
 4 psychological agony of conscious suffocation, but because of the paralysis, the person will
 5 be unable to communicate that suffering and the pain will not be visible to an observer.
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10 43. Pancuronium bromide substantially increases the risk that Plaintiff will be
 11 conscious during the injection of potassium chloride, an extremely painful drug. Once
 12 paralyzed by pancuronium bromide, an inadequately anesthetized person will appear to be
 13 serene and unconscious throughout the execution procedure and will be unable to speak or
 14 move or otherwise inform the execution personnel that he is conscious and experiencing
 15 torturous pain. Indeed, administered by itself to a conscious person, pancuronium bromide
 16 would cause the person to suffocate to death slowly while remaining fully conscious.
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25 44. Pancuronium bromide serves no medical purpose or legitimate function in an
 26 execution. The chemical is used to prevent the executioners and witnesses from knowing
 27 whether the condemned inmate is adequately anesthetized. In cases in which the thiopental
 28 sodium is not successfully delivered to the inmate's circulation and/or the condemned
 29 inmate is not adequately anesthetized, pancuronium bromide will create the appearance of a
 30 serene death while masking the fact that the person is experiencing conscious paralysis,
 31 suffocation, and the agony of cardiac arrest from the administration of potassium chloride.
 32 The use of pancuronium bromide is unnecessary to bring about death. Absent the use of
 33 pancuronium bromide, a person undergoing execution would be able to indicate that he was
 34 still conscious or had regained consciousness prior to the lethal dose of potassium chloride.
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45 45. On information and belief, pancuronium bromide is banned in most states for
 46 use in animal euthanasia because it inhibits the ability to determine if the patient is
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FIRST AMENDED AND SUPPLEMENTAL
 FOR DECLARATORY JUDGMENT AND
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1 experiencing pain during the procedure. Washington's statutory and administrative
 2 provisions express a strong preference for pentobarbital-based drugs. See RCW §§
 3 16.52.011; 69.50.310; WAC §§ 246-886-020 & 246-886-030.
 4

5
 6 46. Pancuronium bromide substantially and foreseeably increases the risk that
 7 Plaintiff will be conscious during the injection of the potassium chloride that follows. Once
 8 paralyzed, he will be unable to indicate to the execution personnel that he is conscious and
 9 experiencing torturous pain. When pancuronium bromide is administered after an initial
 10 dose of thiopental sodium, as the Policy calls for, it creates the real, gratuitous, and
 11 unacceptable risk that Plaintiff will be paralyzed by the pancuronium bromide but conscious
 12 and able to feel the severe pain caused by the potassium chloride. Administering the
 13 combination of thiopental sodium and pancuronium bromide thus creates the
 14 unconscionable possibility that Plaintiff will consciously experience the agony of
 15 suffocation by the pancuronium bromide and the intense burning as the potassium chloride
 16 moves through his veins, followed by cardiac arrest, without being able to indicate that he
 17 was still conscious or had regained consciousness.
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31 3. Potassium Chloride

32 47. The third and final chemical Defendants intent to administer is potassium
 33 chloride, an extremely painful chemical which causes death by disrupting the heart's
 34 contractions, leading to cardiac arrest and death. As potassium chloride travels through the
 35 bloodstream from the site of injection towards the heart, the chemical activates sensory
 36 nerve fibers inside the veins, causing a prolonged and intense burning sensation. In the
 37 foreseeable event that a person is not adequately anesthetized throughout the execution
 38 procedure, the potassium chloride will cause the person to consciously experience the
 39 agonizing pain of this excruciatingly painful chemical coursing through his veins and of
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FIRST AMENDED AND SUPPLEMENTAL
 FOR DECLARATORY JUDGMENT AND
 INJUNCTIVE RELIEF – 11

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1 cardiac arrest, while being incapable of expressing his suffering due to the paralytic effects
2
3 of the pancuronium bromide.

4
5 48. The AVMA condemns the use of potassium chloride as the sole agent for
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7 animal euthanasia. *See* AVMA Guidelines, *supra*, at 12. If potassium chloride is to be used
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9 at all, the AVMA requires the practitioner administering the potassium chloride to have
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11 proper training and knowledge to ensure that the euthanized animal has reached a surgical
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13 plane, which is characterized by the loss of consciousness, loss of reflex muscle and loss of
14
15 response to noxious stimuli. The Policy lacks even these basic protections.

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17 49. The Policy creates a substantial risk that Plaintiff will not be fully
18
19 anaesthetized when the potassium chloride is administered and therefore will be conscious
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21 and experience torturous pain as a result.

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23 **C. Deficiencies in the DOC's Lethal Injection Protocol Create a Substantial and**
24 **Excessive Risk That Plaintiff Will Suffer Excruciating Pain During Execution**

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26 50. On information and belief, the State of Washington does not use a lethal
27
28 injection procedure and/or employ safeguards substantially similar to those used by the State
29
30 of Kentucky. *See Baze v. Rees*, ___ U.S. ___, 128 S.Ct. 1520, 170 L.Ed. 2d 420 (2008).

31
32 51. The Policy fails for many reasons including, but not limited to, those stated
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34 below.

35
36 52. The Policy fails to set forth a back-up plan in the event of failed intravenous
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38 insertion or other errors in administration of the chemicals.

39
40 53. On information and belief, the State does not select or assemble the lethal
41
42 injection team until 60 to 90 days prior to the execution date, thereby creating the substantial
43
44 risk that the members of the injection team will not have adequate training to perform
45
46 executions in a constitutionally compliant manner.
47

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 12

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1 54. The Policy fails to set forth the procedures for establishing properly the
2
3 intravenous lines through which the lethal solutions will flow. This failure creates a
4
5 substantial, intolerable risk of serious harm that the drugs will not be properly administered,
6
7 specifically, that an adequate dose of thiopental sodium will not reach Plaintiff and render
8
9 him unconscious on a surgical plane of anesthesia, and that therefore Plaintiff will suffer
10
11 suffocation from the administration of the pancuronium bromide and the excruciating pain
12
13 akin to fire running through his veins from injection of the potassium chloride.

14 55. The Policy does not identify who will set the intravenous lines, where and the
15
16 manner in which the intravenous lines will be set, or sufficient credentials, qualifications,
17
18 training, or experience of such person or persons.

19 56. The Policy does not provide a time frame during which the intravenous lines
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21 must be established or a backup plan for vein access in the event that the initial attempt to
22
23 establish the intravenous lines is unsuccessful. The protocol set forth in the Policy fails to
24
25 identify whether the intravenous access will be attempted first through peripheral sites, such
26
27 as arms, hands, or legs, before more invasive measures are attempted.

28 57. The Policy does not prohibit the use of "cut downs" to access veins for the
29
30 intravenous lines. A cut down is a painful procedure that involves surgically exposing a
31
32 vein, inserting a catheter, and closing the skin with suturing, and would be performed prior
33
34 to the administration of the thiopental sodium.

35 58. The Policy does not provide for persons who possess sufficient expertise to
36
37 insert an intravenous line properly to be present in the chamber with the inmate to watch for
38
39 signs of intravenous line problems, such as blockage and infiltration, and what necessary
40
41 measures to take in the event of such instances.

1 59. The Policy does not provide for a standard time for the lethal solutions to be
2 administered or how much time should elapse between administration of the solutions.

3
4 60. The Policy fails to specify where the injection team and injection team leader
5 are to be located during the administration of the intravenous lethal solutions or how the
6 execution facilities are set up, thereby creating the substantial risk that there will be not be
7 adequate monitoring for purposes of assessing unconsciousness and whether intravenous
8 tubes are and remain properly inserted into veins.

9
10 61. The Policy fails to provide sufficient methods to ensure and monitor that the
11 proper level of unconsciousness is maintained following administering of the sodium
12 thiopental to ensure that an inmate will not experience suffocation or the excruciating
13 burning pain caused by the second and third drugs, *i.e.*, whether the inmate is on the surgical
14 plane of anesthesia prior to administration of pancuronium bromide and potassium chloride.
15 In light of the known risk that a person not completely and deeply unconscious will
16 experience torturous pain and suffering as a result of the last two drugs to be administered,
17 the lack of safeguards creates a substantial intolerable risk of serious harm and wantonly
18 exposes death-sentenced prisoners to that risk.

19
20 62. The Policy does not provide how the syringes containing the lethal solutions
21 will be labeled to ensure that the injection team administers the drugs in the correct order
22 and dosage.

23
24 63. The Policy does not provide where or how the lethal solutions will be stored
25 upon arrival to the Washington State Penitentiary to guarantee that the integrity of the
26 chemicals is not compromised prior to the execution.

27
28 64. The Policy's inadequate procedures and lack of safeguards for establishing
29 and maintaining the IVs, administering the lethal solutions and maintaining the
30

1 unconsciousness of the condemned creates a substantial intolerable risk of serious harm to
2
3 Plaintiff.

4
5 65. The Policy delegates the assignment of all staff to be involved in the
6
7 execution, including the administration of the medical procedures, as well as the
8
9 determination whether expert advice should be sought as to whether to deviate from the
10
11 Policy's procedures for inmate-specific physical or medical reasons, to the Superintendent
12
13 of the Washington State Penitentiary (Superintendent), a position that, on information and
14
15 belief, does not require any medical certification, training, experience, or knowledge.

16
17 66. The Policy lacks any guidelines for injection team members or other
18
19 personnel to rely upon if they are required to exercise their discretion during the lethal
20
21 injection process.

22
23 67. The Policy provides that briefing and rehearsals are to be conducted only "as
24
25 necessary," but fails to provide what will be rehearsed, and whether and what type of
26
27 follow-up will take place in the event that the rehearsal reveals deficiencies, difficulties, or
28
29 flaws with the personnel or procedures.

30
31 68. A physical examination of the person, may, but need not, be performed. The
32
33 Policy does not state who is to review the medical file the requirements for that person's
34
35 credentials or qualifications. There is no guidance as to who will conduct the physical
36
37 examination, when a physical examination will be performed or the scope of the
38
39 examination. The Policy provides that, based upon the physical examination, the
40
41 Superintendent "may" but need not consult with "appropriate experts" to determine whether,
42
43 based on the medical file, any deviation from the policy is advisable. There is no guidance
44
45 as to what the credentials and qualifications of these "appropriate experts" must be, or
46
47 whether they must have any experience administering lethal injections.

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 15

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1 69. The Policy does not provide for any evaluation of the person's psychiatric
2 state.
3

4 70. The Policy fails to provide for a physician to be on stand-by, and does not
5 make any provision for resuscitation in the event that a last-minute reprieve is granted once
6 the execution process has begun.
7
8
9

10 **D. Hanging**

11 71. All prior allegations set forth above are re-alleged as if set forth entirely
12 herein.
13
14

15 72. The Policy provides that Plaintiff must choose between lethal injection and
16 hanging as his method of execution. He has not done so.
17
18
19

20 73. Execution by hanging as practiced in Washington is unconstitutional under
21 the United States and Washington Constitutions. Hanging creates a substantial risk that
22 Plaintiff will consciously experience pain and suffering during execution.
23
24
25

26 **COUNT I:**

27 **Violation of the Right to be Free from Cruel Punishment and Arbitrary and**
28 **Capricious Procedures Pursuant to Article I, Sections 3 and 14,**
29 **of the Washington Constitution (Lethal Injection)**
30

31 74. All prior allegations set forth above are re-alleged as if set forth entirely
32 herein.
33
34

35 75. Defendants, acting under color of Washington law, intend to execute Plaintiff
36 in a manner and by methods that will cause unnecessary pain, that do not comport with
37 evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3
38 and 14 to the Washington State Constitution to be free from cruel punishment.
39
40
41

42 76. Although it is possible to conduct executions in a constitutionally compliant
43 manner, Defendants have chosen not to do so. While Defendants could select additional or
44
45
46
47

1 alternative chemicals and retain qualified medical personnel to administer its chosen
 2 chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have
 3 acted with deliberate indifference and failed to do so. Defendants' current procedures
 4 violate evolving standards of decency.
 5
 6
 7
 8

9 **COUNT II:**

10 **Violation of the Right to be Free from Cruel and Unusual Punishment**
 11 **Pursuant to Eighth Amendment**
 12 **to the United States Constitution (Lethal Injection)**
 13

14 77. All prior allegations set forth above are re-alleged as if set forth entirely
 15 herein.
 16

17 78. Defendants, acting under color of Washington law, intend to execute Plaintiff
 18 in a manner and by methods that will cause unnecessary pain, that do not comport with
 19 evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth
 20 Amendment to the United States Constitution, as made applicable to the State of
 21 Washington by the Fourteenth Amendment to the United States Constitution, to be free from
 22 cruel and unusual punishment.
 23
 24
 25
 26
 27
 28
 29

30 79. Although it is possible to conduct executions in a constitutionally compliant
 31 manner, Defendants have chosen not to do so. While Defendants could select additional or
 32 alternative chemicals and retain qualified medical personnel to administer its chosen
 33 chemicals to ensure the constitutionality of its lethal injection procedure, Defendants have
 34 acted with deliberate indifference and failed to do so. Defendants' current procedures
 35 violate evolving standards of decency.
 36
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COUNT III:

**Violation of the Right to be Free from Cruel Punishment and Arbitrary and
Capricious Procedures Pursuant to Article I, Sections 3 and 14,
of the Washington Constitution (Hanging)**

80. All prior allegations set forth above are re-alleged as if set forth entirely
herein.

81. Defendants, acting under color of Washington law, intend to execute Plaintiff
in a manner and by methods that will cause unnecessary pain, that do not comport with
evolving standards of decency, thereby depriving Plaintiff of his rights under Article I, §§ 3
and 14 to the Washington Constitution to be free from cruel punishment.

82. Although it is possible to conduct executions in a constitutionally compliant
manner, Defendants have chosen not to do so. While Defendants could select additional or
alternative methods of execution to ensure the constitutionality of its procedure, Defendants
have acted with deliberate indifference and failed to do so. Defendants' current procedures
violate evolving standards of decency.

COUNT IV:

**Violation of the Right to be Free from Cruel and Unusual Punishment
Pursuant to Eighth Amendment
to the United States Constitution (Hanging)**

83. All prior allegations set forth above are re-alleged as if set forth entirely
herein.

84. Defendants, acting under color of Washington law, intend to execute Plaintiff
in a manner and by methods that will cause unnecessary pain, that do not comport with
evolving standards of decency, thereby depriving Plaintiff of his rights under the Eighth
Amendment to the United States Constitution, as made applicable to the State of

1 Washington by the Fourteenth Amendment to the United States Constitution, to be free from
2
3 cruel and unusual punishment.

4
5 85. Although it is possible to conduct executions in a constitutionally compliant
6
7 manner, Defendants have chosen not to do so. While Defendants could select additional or
8
9 alternative methods of execution to ensure the constitutionality of its procedure, Defendants
10
11 have acted with deliberate indifference and failed to do so. Defendants' current procedures
12
13 violate evolving standards of decency.

14
15 **COUNT V:**

16 **Violation of the Right to Due Process Pursuant to**
17 **Article I, Section 3, of the Washington Constitution**

18
19 86. All prior allegations set forth above are re-alleged as if set forth entirely
20
21 herein.

22
23 87. Defendants, acting under color of Washington law, fail to set forth, in detail
24
25 sufficient for Plaintiff to evaluate, the manner and methods of the execution employed by
26
27 the State of Washington as required by Article I, Section 3 of the Washington Constitution.

28
29 88. As a direct cause of Defendants' failure to adequately describe the manner
30
31 and methods of execution employed by the State of Washington, Plaintiff is unable to make
32
33 a knowing, voluntary and informed election of his method of execution.

34
35 **COUNT VI:**

36 **Violation of the Right to Due Process Pursuant to the**
37 **Fourteenth Amendment to the United States Constitution**

38
39 89. All prior allegations set forth above are re-alleged as if set forth entirely
40
41 herein.

42
43 90. Defendants, acting under color of Washington law, fail to set forth, in detail
44
45 sufficient for Plaintiff to evaluate, the manner and methods of the execution employed by
46
47

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 19

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1 the State of Washington as required by the Fourteenth Amendment to the United States
2 Constitution.
3

4 91. As a direct cause of Defendants' failure to adequately describe the manner
5 and methods of execution employed by the State of Washington, Plaintiff is unable to make
6 a knowing, voluntary and informed election of his method of execution.
7
8
9

10
11 **COUNT VII:**
12 **DOC Unconstitutionally Exceeded Its Jurisdiction**
13 **in Implementing the Execution Policy**
14

15 92. All prior allegations set forth above are re-alleged as if set forth entirely
16 herein.
17

18 93. The Washington legislature did not delegate authority to DOC to establish or
19 implement a policy by which executions are to be carried out in the State.
20
21

22 94. By acting without a legislative grant of authority in establishing or
23 implementing an execution policy, DOC exceeded its jurisdiction, and its policy may not be
24 enforced.
25
26
27
28

29 **COUNT VIII:**
30 **Any Delegation of Authority to DOC to Establish or**
31 **Implement Execution Policy is Improper**
32

33 95. All prior allegations set forth above are re-alleged as if set forth entirely
34 herein.
35

36 96. No Washington statute sets forth which agency, if any, has delegated
37 authority to establish or implement an execution policy.
38
39

40 97. No Washington statute sets forth the scope of authority under which a State
41 agency might establish or implement an execution policy.
42
43
44
45
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FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF -- 20

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99. There is no provision made by the Legislature, or by DOC, for review of the Policy under the Administrative Procedures Act or otherwise to assure that DOC's policies and actions are constitutional, and not arbitrary and capricious _____ and are otherwise lawful.

100. By failing to identify the appropriate administrative body, the scope of delegation and the administrative and procedural standards, safeguards, or guidelines to be followed when establishing or implementing an execution policy, any delegation of authority to establish or implement an execution policy that DOC may claim to have is unconstitutional and its policy may not be enforced.

VI. PRAYER FOR RELIEF

Mr. Stenson respectfully requests that this Court grant the following relief:

A. A preliminary and permanent injunction barring Defendants from executing him using the practices and procedures currently employed by DOC in lethal injections, and from establishing, promulgating or carrying out any methods of execution without a proper grant of Legislative authority to do so, and without sufficient standards, safeguards and guidelines to follow, and without a means for review of DOC policy and actions for constitutionality and other measures of lawfulness.

B. Declaratory judgment stating that executing Plaintiff by lethal injection using the execution protocol set forth in the DOC Policy and DOC practices, procedures, acts and omissions violate Plaintiff's rights under Article I, §§ 3, 14 of the Washington Constitution.

1 C. Declaratory judgment stating that executing Plaintiff by lethal injection using
2 the execution protocol set forth in the DOC Policy and DOC practices, procedures, acts and
3 omissions violate Plaintiff's rights under the Eighth and Fourteenth Amendments to the
4 United States Constitution.
5
6

7 D. Declaratory judgment stating that execution by hanging violates Plaintiff's
8 rights under Article I, §§ 3, 14 of the Washington Constitution and a preliminary and
9 permanent injunction barring Defendants from executing him by hanging.
10
11

12 E. Declaratory judgment stating that execution by hanging violates Plaintiff's
13 rights under the Eighth and Fourteenth Amendments to the United States Constitution.
14
15

16 F. Declaratory judgment stating that Defendants' refusal to disclose its
17 execution procedures relating to lethal injection violates due process and fundamental
18 notions of fairness, and requiring Defendants to disclose these procedures to Plaintiff in a
19 timely manner sufficient to allow him to investigate and evaluate the procedure to ensure
20 that it does not violate prohibitions against cruel and unusual punishment in the Washington
21 and United States constitutions.
22
23

24 G. Declaratory judgment stating that Defendants' refusal to disclose its
25 execution procedures relating to hanging violates due process and fundamental notions of
26 fairness as provided by the Fourteenth Amendment to the United States Constitution, and
27 requiring Defendants to disclose these procedures to Plaintiff in a timely manner sufficient
28 to allow him to investigate and evaluate the procedure to ensure that it does not violate the
29 prohibitions against cruel and unusual punishment in the Washington and United States
30 constitutions.
31
32

33 H. Any further relief, including attorneys' fees and/or costs, that the Court
34 deems just and proper.
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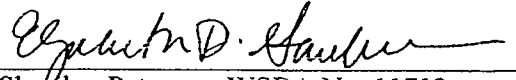
FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 22

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2 DATED: October 29, 2008
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PERKINS COIE LLP

By: 
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Attorneys for Plaintiff

FIRST AMENDED AND SUPPLEMENTAL
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF – 23

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EXHIBIT 4

<input type="checkbox"/>	EXPEDITE
<input checked="" type="checkbox"/>	No hearing set
<input type="checkbox"/>	Hearing is set
Date: _____	
Time: _____	
The Honorable Chris Wickham	

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL; STEPHEN SINCLAIR;
MARC STERN; CHERYL STRANGE;
WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, and DOES 1-50

Defendants.

No. 08-2-02080-8

ORDER DENYING IN PART AND
GRANTING IN PART DEFENDANTS'
MOTION TO DISMISS (PROPOSED)

The Court, having considered Defendants' CR 12(b)(6) Motion to Dismiss, Plaintiff's Complaint and Amended Complaint for Declaratory Judgment and Injunctive Relief, the response of the Plaintiff, reply, sur-reply, and all other submissions on this motion, and the remaining files and records herein, does hereby find and ORDER that Defendants' Motion to Dismiss is DENIED in part and GRANTED in part as follows:

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER – 1

68695-0001/LEGAL14959452.1

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EXHIBIT 4

1. Defendants' argument that this case should be dismissed because it is a collateral attack on the judgment is denied. Plaintiff requests judicial review of the method of execution for the Plaintiff and others which is broader than, and not directed at, a specific provision of the judgment or sentence.
2. Defendants' argument that this case should be transferred to the Washington Supreme Court is denied. CrR 7.8 does not provide a vehicle for transfer, and the Court is not aware of any such vehicle. With respect to the inquiry to be made under *Baze*, there is value in having a trial court consider evidence, enter findings and conclusions and provide a record for appellate court review.while The Court of Appeals and the Supreme Court are not equipped for discovery and fact finding.
3. Defendants' argument that this case should be dismissed because it is barred by *res judicata* is denied. The doctrine of *res judicata* precludes issues that were or should have been raised in prior actions. This doctrine does not apply. There are other inmates facing the death penalty so Mr. Stenson was not under an obligation to bring this challenge at an earlier time. Because the claims pled go beyond Mr. Stenson, there was no obligation that they be raised in his prior criminal proceedings.
4. Defendants' argument that this case should be dismissed on statute of limitations grounds is granted as to claims based on hanging, but denied as to claims based on lethal injection. As to hanging, the statute of limitations began to run at the time that the sentence became final. As to lethal injection, the statute of limitations period was reset when DOC amended its policy in June 2007 and again on October 25, 2008, Plaintiff is well within the statute.

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER – 2

68695-0001/LEGAL14959452.1

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5. Defendants' argument that this case should be dismissed for failure to state a claim is denied. The question is whether the Washington policy is substantially similar to the Kentucky policy. It is apparent that there have been some changes and there are differences from the Kentucky policy. The question is whether these differences are significant such that the Plaintiff could prove a violation of the Eighth Amendment. The issues are complicated and present a significant challenge for the trial court to evaluate and make factual findings. The Court cannot rule as a matter of law that Plaintiff cannot prove any set of facts showing that the Washington policy is unconstitutional.

6. The Clerk shall send uncertified copies of this Order to counsel for the Plaintiff and Defendants.

DATED this 21 day of November, 2008.

Honorable Chris Wickham

Presented by:

PERKINS COIE LLP

By: Diane M. Meyers
 Sherilyn Peterson, WSBA No. 11713
speterson@perkinscoie.com
 Diane Meyers, WSBA No. 40729
DMeyers@perkinscoie.com
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Attorneys for Plaintiff

Approved as to Form

SARA J OLSON
 SARA J OLSON, WSBA #33003
JOHN J. SAMSON
 JOHN J. SAMSON, WSBA #22187
 Attorneys for Defendants

[PROPOSED] ORDER DENYING
 DEFENDANTS' MOTION TO DISMISS OR
 TRANSFER - 3

68695-0001/LEGAL14959452.1

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EXHIBIT 5

1 ☐ EXPEDITE
 2 ☒ No Hearing Set
☐ Hearing is Set:

3 Date:
 3 Time:
 4 The Honorable Chris Wickham
 5
 6
 7
 8

9 **STATE OF WASHINGTON**
THURSTON COUNTY SUPERIOR COURT

10 DAROLD R.J. STENSON,

NO. 08-2-02080-8

11 Plaintiff,

ORDER DENYING PLAINTIFF'S
 MOTION FOR PRELIMINARY
 INJUNCTION (PROPOSED)

12 v.

13 ELDON VAIL; STEPHEN SINCLAIR;
 14 MARC STERN; CHERYL STRANGE;
 15 WASHINGTON STATE
 DEPARTMENT OF CORRECTIONS,
 and DOES 1-50

16 Defendants.

17 THIS MATTER having come on pursuant to the Plaintiff's Motion for Preliminary
 18 Injunction; the State being represented by ROBERT M. MCKENNA, Attorney General and
 19 SARA J. OLSON and JOHN J. SAMSON, Assistant Attorneys General, and the Plaintiff being
 20 represented by SHERILYN PETERSON and ELIZABETH D. GAUKROGER, Perkins Coie,
 21 LLP; and the Court having reviewed the Motion, the Responses and replies thereto, and the
 22 files and records and being fully advised in the premises, now therefore, IT IS HEREBY
 23 ORDERED:

24 1. There are three criteria for preliminary injunctive relief as established in Tyler
 25 Pipe Indus., Inc. v. Dep't of Revenue, 96 Wn.2d 785, 638 P.2d 1213 (1982).
 26

ORDER DENYING PLAINTIFF'S
 MOTION FOR PRELIMINARY
 INJUNCTION (PROPOSED)
 CAUSE NO. 08-2-02080-8

1

ATTORNEY GENERAL OF WASHINGTON
 Corrections Division
 PO Box 40116
 Olympia, WA 98504-0116
 (360) 586-1445

BIT 5

1 2. The Plaintiff has satisfied two elements—well grounded fear of invasion of a
2 right and whether the opposing party's acts complained of will result in actual and substantial
3 injury.

4 3. But Plaintiff must also show a likelihood of success on the merits. Plaintiff has
5 not demonstrated a likelihood of success on the merits.

6 4. The Supreme Court recently reviewed a constitutional challenge to Kentucky's
7 procedures for lethal injection as a method of execution. Baze v. Rees, ___ U.S. ___, 128 S. Ct.
8 1520, 170 L. Ed. 2d 420 (2008). The Supreme Court held that Kentucky's protocol for lethal
9 injection was constitutional, and the Supreme Court also held that a state protocol that was
10 substantially similar to the Kentucky protocol would not violate the Constitution.

11 5. This Court finds the Washington policy governing lethal injection, despite some
12 differences from the Kentucky protocol, appears to be substantially similar to the Kentucky
13 protocol. The Court further finds that in areas where the two state policies diverge, it is because
14 the Washington policy is not as specific as the Kentucky policy, although the Washington policy
15 may be, in implementation, quite similar to the Kentucky policy.

16 6. The Court further finds that, even to the extent the Washington policy and the
17 Kentucky policy are not similar as written or actually implemented, it is not clear that the
18 Supreme Court instructed all states to have lethal injection policies identical to Kentucky's
19 protocol in order to satisfy the Constitution. The Supreme Court held that the prisoners cannot
20 challenge a policy merely by showing the existence of slightly safer alternatives, since such a rule
21 would turn the courts into boards of inquiry determining best practices for an execution. To
22 establish a constitutional violation, the safer alternatives must be feasible, readily available, and
23 substantially reduce the risk of unnecessary pain. Plaintiff has made no such showing.

24 7. Although the Court cannot find as a matter of law that Plaintiff has failed to state a
25 claim for relief, the Court does find that a likelihood of success on such a claim is slight, and that
26

1 though the harm that could result from the execution is great, it does not outweigh the remoteness
2 of success on the merits of the claim.

3 8. The Court further notes the judgment and sentence was entered in 1994, and the
4 judgment and sentence became final in 1997. The strong policy in favor of closure and in
5 carrying out sentences, and the fact that Plaintiff has received judicial review of his sentence in
6 multiple cases all weigh against the grant of a preliminary injunction.

7 9. For these reasons, Plaintiff's Motion for Preliminary Injunction is DENIED.

8 10. The Court recognizes that the Plaintiff may want to seek immediate review of
9 this decision and I want to facilitate review, and therefore direct counsel to propose findings
10 and conclusions for me to enter on November 21, 2008 on the 9:00 AM motion calendar.

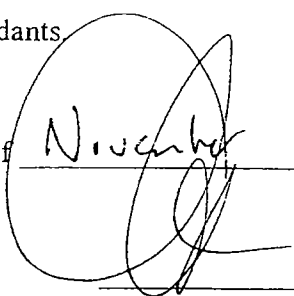
11 11. I hereby certify, pursuant to RAP 2.3(b)(4), that this decision involves a
12 controlling question of law as to which there is a substantial ground for difference of opinion
13 and that immediate review of the order may materially advance the ultimate termination of the
14 litigation.

15 12. Pursuant to RAP 2.3(d)(2), this decision involves a significant question of law
16 under the Constitutions of the State of Washington and the United States.

17 13. Pursuant to RAP 2.3(d)(2), this decision involves an issue of the public interest
18 which should be determined by an appellate court.

19 14. The Clerk shall send uncertified copies of this Order to counsel for the
20 Plaintiff and counsel for the Defendants.

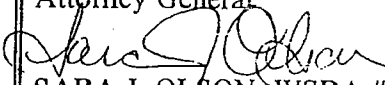
21
22 DATED this 21 day of November, 2008.

23
24
25 
26 CHRIS WICKHAM
Judge, Thurston County Superior Court

1 Presented by:

2 ROBERT M. MCKENNA

3 Attorney General

4  SARA J. OLSON, WSBA #33003

5 JOHN J. SAMSON, WSBA #22187

6 Assistant Attorneys General

Attorneys for Defendants

7
8 Approved as to form:

9  WSBA #40729

10 SHERILYN PETERSON

11 ELIZABETH D. GAUKROGER

Attorneys for Plaintiff

EXHIBIT 6

LOG I.D. NUMBER

0824742

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONSLEVEL 1 - INITIAL GRIEVANCE
NIVEL 1 - QUEJA INICIAL

Name: NOMBRE:	Last APELLIDO	First PRIMER NOMBRE	Middle ZDO NOMBRE	DOC Number NUMERO DOC	Facility/FACILIDAD	Unit/Cell UNIDAD/CELDA
STENSON, Darold				232018	WSP	IMU N
Community Corrections Office OFICINA DE CORRECCIONES EN LA COMUNIDAD			Date Typed FECHA ESCRITA	PART B - LEVEL 1 RESPONSE / PARTE B RESPUESTA PRIMER NIVEL		
			11/14/08	Remedy/REMEDIIO	Resolution/RESOLUCION	Pending/PENDIENTE
				08	04	

PART A - INITIAL GRIEVANCE / PARTE A - QUEJA INICIAL

Response due/Respuesta requerida en

11/20/08

I WANT TO GRIEVE the DOC's policy and procedure for carrying out the penalty phase of my case. I believe that the State's current and alternative methods will cause me undue pain and suffering and are cruel and unusual punishment. Also, I do not have enough information to be able to make an informed choice between the available methods.

SUGGESTED REMEDY: Changes should be made in the State's mandated methods and procedures at WSP. [10/16/08]

Grievance Coordinator Signature
FIRMA DE COORDINADOR DE QUEJAS

Date
FECHA

/s/ Darold Stenson

11/14/08

Grievant Signature
FIRMA DE QUEJANTE

Date
FECHA

PART B - LEVEL 1 RESPONSE / PARTE B RESPUESTA PRIMER NIVEL

Although your complaint was reconsidered and found to be a grievable issue, WSP doesn't have the authority to change DOC policy regarding this matter. Your suggested remedy can't be implemented at this level.

Grievance Coordinator Signature
COORDINADOR DE QUEJAS

Date
FECHA

You may appeal this response by submitting a written appeal to the coordinator within two (2) working days from date this response was received.
Ud. Puede apelar esta respuesta al someter una apelación por escrito al coordinador dentro de dos (2) días de trabajo de la fecha en que esta respuesta fue recibida.

Distribution: White-
Canary-

Grievance Program Manager-Garante del Programa de Quejas
Grievant-Quejante

Pink-

Grievance Coordinator-Coordinador de Quejas

Green-

Grievance Coordinator-Coordinador de Queja
Goldenrod- Grievant-Quejante

EXHIBIT

6

STENSON, Darold (#232018)/IMU-N (B05)

Grievance Log ID# 0824742



Although your complaint was reconsidered and found to be a grievable issue, WSP doesn't have the authority to change DOC policy regarding this matter. Your suggested remedy can't be implemented at this level.

LOG # NUMBER

0824742

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER COMPLAINT

CHECK ONE: ☒ INITIAL GRIEVANCE, ☐ EMERGENCY GRIEVANCE, ☐ APPEAL TO NEXT LEVEL

RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.

NAME: LAST STENSON	FIRST DAROLD	MIDDLE R. J.	DOC NUMBER 232548
PROGRAM ASSIGNMENT none listed	WORK HOURS none	FACILITY/OFFICE W. S. P.	UNIT/CELL S. H. 4. H-10
COMMUNITY SUPERVISION Department of Corrections, 1200 1st Avenue, Seattle, WA 98101			
MAILING ADDRESS STREET ADDRESS CITY STATE ZIP CODE TELEPHONE NUMBER			

I WANT TO GRIEVE: The DOC's policy and procedures for carrying out the penalty phase of my case. I believe that the states current and alternative methods will cause me undue pain and suffering and are cruel and unusual punishment. Also, I do not have enough information to be able to make an informed choice between the available methods.

SUGGESTED REMEDY:

Changes should be made in the states mandated methods and procedures at W. S. P.

MANDATORY

SIGNATURE

Darold R. J. Stenson 10-16-08

DATE

GRIEVANCE COORDINATOR'S RESPONSE

Your complaint is being returned because:

- ☒ It is not a grievable issue.
☐ You requested to withdraw the complaint.
☐ You failed to respond to callout sheet on
☒ The formal grievance/appeal paperwork is being prepared.

LOCATION CODE

WSP-E 05

DATE RECEIVED

10-20-08

- ☐ The complaint was resolved informally.
☐ Additional information and/or rewriting is needed.
 (See below.) Return within five (5) days or by:

Due Date:

☐ No rewrite received. Date:

EXPLANATION: This isn't a grievable issue, per policy, because you are able to seek relief through the inmate system. However, you may request information regarding your sentence through your counselor.

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
01	02	010	688	08	08	10/21/08	<i>L. Young</i>
				08	09	11/14/08	<i>L. Young</i>

Distribution: WHITE-Grievance Program Manager
DOC 05-165 (Rev. 2/05/07)

CANARY-Grievance Coordinator

PINK-Grievant

DOC 550.100

* This will be accepted per the Grievance Program Manager.

LOG I.D. NUMBER

0824712



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

CHECK ONE: ☐ INITIAL GRIEVANCE, ☐ EMERGENCY GRIEVANCE, ☒ APPEAL TO NEXT LEVEL

OFFENDER COMPLAINT

RESIDENTIAL FACILITIES: Send all completed copies of this form to the Grievance Coordinator. Explain what happened, when, where, and who was involved or which policy/procedure is being grieved. Be as brief as possible but include the necessary facts. A formal grievance begins on the date the typed grievance forms are signed by the coordinator. Contact a staff member to report an emergency situation or to initiate an emergency grievance. Please attempt to resolve all complaints through appropriate staff before initiating a grievance.

NAME: LAST <u>STENSON</u>	FIRST <u>DAROLD</u>	MIDDLE <u>R.D.</u>	DOC NUMBER <u>232013</u>
PROGRAM ASSIGNMENT <u>Community Supervision</u>	WORK HOURS <u>10:00 AM - 4:00 PM</u>	FACILITY/OFFICE <u>WSP</u>	UNIT/CELL <u>SMU B-5</u>
COMMUNITY SUPERVISION: Send all completed copies of this form directly to Grievance Program Specialist, Offender Grievance Program, Department of Corrections, P.O. Box 41428, Olympia, WA 98541-0280.			
MAILING ADDRESS: STREET OR P.O. BOX <u>1000 1st St</u>	CITY <u>OLYMPIA</u>	STATE <u>WA</u>	ZIP CODE <u>98501</u>
TELEPHONE NUMBER <u>360-350-1234</u>			

I WANT TO GRIEVE: The response that I received in my grievance as being a union-releasable issue.

SUGGESTED REMEDY: the same as was suggested in my initial grievance.

MANDATORY

SIGNATURE

DATE

Darold R.D. Stenson 10-28-08

GRIEVANCE COORDINATOR'S RESPONSE

Your complaint is being returned because:

- ☒ It is not a grievable issue.
☐ You requested to withdraw the complaint.
☐ You failed to respond to callout sheet on 10/29/08.
☒ The formal grievance/appeal paperwork is being prepared.

LOCATION CODE

WSP-E04

DATE RECEIVED

10/29/08

☐ The complaint was resolved informally.

☐ Additional information and/or rewriting is needed.
 (See below.) Return within five(5) days or by:

Due Date:

☐ No rewrite received. Date:

EXPLANATION: Findings of non-grievability are not grievable or appealable because they are automatically reviewed by the Grievance Program Manager in Olympia.

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
				<u>08</u>	<u>08</u>	<u>10/21/08</u>	<u>L. Young</u>
				<u>08</u>	<u>09</u>	<u>11/14/08</u>	<u>L. Young</u>

Distribution: WHITE-Grievance Program Manager
DOC 05-165 (Rev. 2/05/07)

CANARY-Grievance Coordinator

PINK-Grievant

DOC 550.100

* This will be accepted per the Grievance Program Manager.

EXHIBIT 7

DECLARATION OF STEPHEN D. SINCLAIR

I, STEPHEN D. SINCLAIR, make the following declaration:

1. I am currently employed as the Superintendent of the Washington State Penitentiary (WSP). I have been employed in this position for 2 months. Prior to assuming the position of Superintendent, I was employed as an Associate Superintendent at WSP for 3 years. I have worked for the Department of Corrections (DOC) for 20 years. Prior to my employment by DOC, I was an infantryman in the United States Army and stationed at various posts in and out of the country. During my enlistment I received training and certification as a Combat Life Saver and completed a course for Emergency Medical Technicians presented by Pikes Peak Community College in Colorado Springs, Colorado. In previous executions carried out at the Washington State Penitentiary I have participated in the transportation of the Inmate Sentenced to Death Penalty (ISDP) to the chamber holding cell and other security/escort functions.

2. As the Superintendent for WSP, I am personally and thoroughly familiar with DOC Policy 490.200, Capital Punishment. I am familiar with my responsibilities as well as the responsibilities of the Lethal Injection Team and the Escort Team.

3. Darold Stenson is an ISDP and is scheduled for execution on December 3, 2008. I have reviewed Mr. Stenson's medical records and know that his weight fluctuates between 230 and 233 pounds and that his veins have been examined and are considered "normal" in that there are no signs of collapsed veins. Additionally, Mr. Stenson does not have a history of intravenous (IV) drug use.

4. I am personally aware of the identities of all members of the Lethal Injection Team and the Escort Team and of their qualifications, training, and professional experience.

5. Each member of the Lethal Injection Team has sufficient training or experience to carry out the lethal injection process without any unnecessary pain to Mr. Stenson. All members of the Lethal Injection Team each have one or more year of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation, as required by DOC Policy 490.200, Directive IX(A)(1)(d).

EXHIBIT 1

Additionally, the member of the Lethal Injection Team who will insert the IV lines regularly inserts IV lines as a part of his/her professional duties.

6. Pursuant to the requirements of DOC Policy 490.200, Directive VIII(1)(2) practice sessions have been conducted at WSP in anticipation of Mr. Stenson's scheduled execution.

7. The Lethal Injection team members have conducted three full lethal injection practice sessions since October 6, 2008. Each of these sessions involved a full walk-through of the entire lethal injection process and the insertion of IV lines in both arms of the person acting as the ISDP. I have personally acted in the role of the ISDP for two of these sessions and experienced the entire process to include the insertion of the needle and IV lines on both arms.

8. The lethal injection process includes the escorting in of the ISDP, the placing of the ISDP on the table, the securing of the ISDP to the table, and the insertion of the IV lines. There is 174" of tubing from the saline drip bag in the injection room to the arm of the ISDP in the execution chamber. Once the ISDP has been secured to the table and the IV lines have been inserted in both arms, with saline flowing through the IV lines, the members of the Lethal Injection Team enter and remain in the injection room. This room is approximately two feet from the head of the table to which the ISDP is secured. The injection room has a 9" by 7" door which is opened to the execution chamber to provide for direct, unobstructed, visual communication between myself and the Lethal Injection Team members. Once the Lethal Injection Team members have gone into the injection room, the witnesses are escorted into the witness room. Once the witnesses are seated, the curtain is opened. The witnesses sit six feet from the execution chamber window and have direct visual access to the execution chamber, me, and the ISDP. Once the witnesses have been brought in, the ISDP is permitted to give last words. I then orally communicate with the Deputy Secretary that there are no further stays. Once the Deputy Secretary has confirmed there are no further stays, I give a visual signal to the Lethal Injection Team to begin injection of the 3 grams of thiopental sodium. I observe the ISDP for signs of consciousness after the injection of the thiopental sodium. If any are seen, I instruct

the Lethal Injection Team to insert a second 3 gram dose of thiopental sodium. Once no signs of consciousness are observed, I signal to the Lethal Injection Team to inject the 50 cc normal saline, 100 mg pancronium bromide, 50 cc normal saline, and 240 mEq potassium chloride in succession. Throughout the injection of the drugs I am no more than one foot from the ISDP seated immediately next to his right arm. The execution chamber and the injection room are well lit and provide for clear sight and ample space for the movement of all staff participating in the execution.

9. I have received training on how to insert an IV line so that I am familiar with the process and how it is done effectively, although I will not be the individual inserting the IV lines during Mr. Stenson's execution.

10. I have also received personal, particularized training on recognizing the signs of an IV line that has not been properly sited. In an execution, an IV needle is used to site the IV lines. The IV needle has a connector needle, which is a fine pointed needle, with a fine, plastic sheath around it, with the needle protruding approximately an inch, and an approximately 3-inch length of connector tubing attached to it. The connector needle is inserted into the vein. Once the connector needle enters the vein there is a "flash" of blood which enters the hub of the needle. The "flash" indicates that a vein has been entered. Once the connector needle has entered the vein, the sheath is pushed down into the vein and the connector needle is removed. A syringe is then attached to the connector tubing and a "pull back" of the syringe's plunger is done to see if blood enters the connector tubing, indicating a vein has been entered. Once it is determined that a vein has been entered, the syringe is removed and the connector tubing is attached to the IV tubing and the saline flow begins. If a vein is missed, the "flash" will not occur, the "pull back" will not work, and there will be swelling at the injection site once the saline begins to enter the subcutaneous muscle. I have received training in witnessing the "flash", the "pull back", and looking for swelling at the injection site.

11. In each of the three full practice sessions, there were no difficulties with the insertion of the IV lines. The sessions were conducted without error or incident.

12. Prior to the execution, if Mr. Stenson does not elect hanging, the lethal injection drugs will be obtained by the WSP pharmacy. Once they arrive at the institution, they will be brought from the pharmacy at WSP to my office where they will be secured in a locked box, to which I have the only key. On the day of the execution, the drugs will be taken from the locked box in my office and given to the Lethal Injection Team. The Lethal Injection Team will follow the directions on the thiopental sodium box and will mix the powdered drug with saline to make a liquid to be injected into the ISDP. Both the pancronium bromide and the potassium chloride come in liquid form.

13. The Escort Team members and I have conducted fifteen to twenty hanging practice sessions in the last three weeks. In each of these practice sessions, either a mannequin has been "dropped" through the trap door or a metal container with weights weighing 230 pounds (to simulate Mr. Stenson's body weight) has been "dropped" through the trap door. In each hanging practice session involving the mannequin, of which there have been at least ten, the individual who will be placing the noose around the ISDP's neck has practiced the placing and tightening of the noose. In order to ensure a swift, painless death, the noose is placed extremely tightly around the ISDP's neck with the noose directly behind the ISDP's left ear and the running part of the noose, i.e. the part that moves when the noose is tightened, placed along the front of the neck. Four different ropes have been "stretched" which includes wetting the rope and stretching it to eliminate any risk of recoil once the trapdoor has opened and the ISDP has fallen the five feet. In the practice sessions with the mannequin, after the noose has been securely placed, the trapdoor is opened and the mannequin falls through and the rope is extended to the full five feet. In each hanging practice session involving the metal crate containing weights totaling 230 pounds, of which there have been at least five, the metal crate has been placed on the trapdoor and the rope has been attached to the metal crate. When the trapdoor drops, the metal crate falls through and the rope is extended its full five feet. In each of these fifteen to twenty sessions, the hanging mechanisms functioned without error or incident.

14. If an ISDP elects hanging, the ISDP will be brought into the execution chamber and escorted directly to the window over-looking the witness room. Once at the window, the curtain is opened approximately six inches to allow the ISDP to be visually seen by the witnesses as he makes his last words. Once he has finished his last words, the curtains are closed. Once the curtains are closed, the witnesses cannot see the ISDP directly; however, the room is backlit so that the ISDP's shadow is visible. The witnesses are able to see the ISDP being escorted back to the rope, by seeing his shadow, and can see the rope placed around his neck and tightened. From the witness room, the witnesses can see the trap door fall and can see the lower third of the ISDP's body once the rope has extended the full five feet.

15. As of this date, Mr. Stenson has not elected hanging as his execution method. As such, preparations are still under way for both hanging and lethal injection.

16. I will be present in the execution chamber during Mr. Stenson's execution and will ensure that DOC Policy 490.200 is followed.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 7th day of November, 2008, at Walla Walla, Washington.

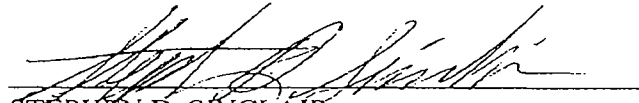

STEPHEN D. SINCLAIR

EXHIBIT 8

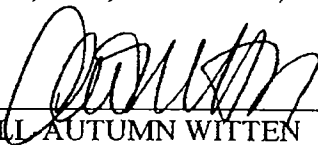
I, DELL-AUTUMN WITTEN, make the following declaration:

1. I am currently employed by the Washington State Department of Corrections (DOC) as a Program Specialist 5. As part of my job duties I am responsible for responding to requests for specific policies promulgated by the Department of Corrections.

2. A true and correct copy of the Department of Corrections Policy Directive 490.200, Capital Punishment, effective October 25, 2008, is attached to this Declaration as Attachment A. This is the current version of the policy.


I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 12th day of November, 2008, at Tumwater, Washington.



DELL AUTUMN WITTEN

ATTACHMENT A

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS POLICY	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 1 of 12	NUMBER DOC 490.200
	TITLE CAPITAL PUNISHMENT		

REVIEW/REVISION HISTORY:

Effective: 9/3/93
 Revised: 6/15/98
 Revised: 8/10/01
 Revised: 6/21/07
 Revised: 10/25/08

SUMMARY OF REVISION/REVIEW:

Title and Team Name changes throughout
 I.A.1., II.C. & VIII.A.1., & VIII.C.2. – Added clarifying language
 III.B.3. – Added requirements for ISDP incoming mail
 III.B.4.b. & 5.b. – Added clarifying language regarding attorney of record
 Revised IV.A.1. to specify a single media event
 Added IV.B.1. & DOC 21-575 Acknowledgment of Visitor Search Requirements for searches of media representatives
 Revised V.F. regarding search requirement for witnesses
 VI.C. – Revised housing requirements for female ISDP
 VIII.A.2. – Added requirement for 3 practice sessions for lethal injections
 VIII.B. – Removed medical file review; revised physical examination requirement
 IX.A.1.d. – Added that Lethal Injection Team members must be trained; added qualifications
 IX.A.2.a. – Changed Director of Health Services to Superintendent
 IX.A.4.b. & d. – Revised requirements for lethal injection
 IX.A.4.h. – Removed requirement that Lethal Injection Team remove apparatus and saline
 X.A. – Calls to Headquarters will be made to the Department Emergency Operations Center
 X.F. – Removed requirement that Death Certificate be signed before removal of body
 Several changes to Attachment 1

APPROVED:

Signature on File


ELDON VAIL, Secretary
 Department of Corrections

10/23/08

 Date Signed

ATTACHMENT



 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 2 of 12	NUMBER DOC 490.200
	TITLE CAPITAL PUNISHMENT		

REFERENCES:


DOC 100.100 is hereby incorporated into this policy; RCW 10.95.160-190; WAC 137-48-050; DOC 410.040 Incident Command System (ICS)

POLICY:

- I. The Department has established procedures governing capital punishment to meet the requirements of RCW 10.95.160-190. These procedures set forth:
 - A. Security requirements for an Inmate Subject to the Death Penalty (ISDP),
 - B. Protocol for conducting an execution,
 - C. The care provided the ISDP while a valid Death Warrant is in force, and
 - D. The method of execution by lethal injection or hanging.
- II. The Department Secretary designates the Assistant Secretary for Prisons to coordinate:
 - A. The responsibilities of the Washington State Penitentiary (WSP) Superintendent, and
 - B. A review of the procedures and all operational decisions in carrying out the execution, as well as the legal status of the Death Warrant.

DIRECTIVE:


- I. ISDP Housing
 - A. Upon receipt of an ISDP and prior to receipt of a Death Warrant:
 1. Male ISDPs shall be housed in a single person cell located in a segregated area of WSP.
 2. Female ISDPs shall be housed in a segregated area of the Washington Corrections Center for Women (WCCW). Prior to the execution date, the female ISDP will be transported to WSP for housing and execution.
- II. Pre-Execution Procedure
 - A. Consistent with RCW 10.95.190, a log shall be maintained with the Death Warrant in the Superintendent's Office.
 - B. Responsibilities are listed in the Execution Procedures and Assignments Checklist (Attachment 1).

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 3 of 12	NUMBER DOC 490.200
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- C. Only staff assigned by the Superintendent will attend the execution. No facility staff will be required to participate in any part of the execution procedure.

III. Notification to ISDP


- A. After receiving confirmation of a valid Death Warrant, the Superintendent will designate an Associate Superintendent to personally interview the ISDP regarding procedures relating to the execution.
- B. The Associate Superintendent will provide the ISDP with a written summary of procedures, to include mail, visits, telephone usage, and available religious services. The ISDP will be informed of the following:
1. The date of the execution.
 2. The punishment of death shall be by lethal injection.
 - a. The ISDP may elect hanging as an alternate means of execution.
 - b. The procedure to be used will be determined 14 days prior to the execution and the method cannot be changed after that date. If the ISDP elects hanging, it must be stated in writing no later than 14 days prior to the execution date.
 3. Mail procedures for an ISDP with an active Death Warrant will be as follows:
 - a. The Mail Room Sergeant will be instructed, in writing, to forward all incoming mail, unopened, to the designated Associate Superintendent, who will screen and exclude any items which may threaten the order and security of the facility with regard to the ISDP.
 - 1) Mail intended to harass the ISDP will be considered a threat to the orderly operation of the facility and restricted per WAC 137-48-050.
 - 2) Legal mail will be screened, not read.
 - b. The Mail Room Sergeant will maintain a log of all incoming and outgoing mail, noting the date and time of receipt and delivery. A separate log will be maintained for all legal mail.
 4. All visits between the ISDP and authorized visitors will be no contact.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 4 of 12	NUMBER DOC 490.200
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- a. Visitation for an ISDP will be consistent with the visiting procedures of other offenders housed in the Intensive Management Unit (IMU).
 - b. Seven days prior to the execution, daily visits will be authorized in addition to visits with the attorney of record.
 - c. Twenty-four hours prior to the execution date, all visits and visitors require the approval/denial of the Superintendent.
 - d. After the ISDP is moved to the execution holding cell, visits will be restricted to approved clergy and the attorney of record.
5. The ISDP will have unlimited phone access during the daily yard period. Fourteen days prior to the execution date, an additional daily one hour yard will be provided.
- a. There will be no limit on the number or duration of calls to and from the attorney of record.
 - b. Only calls from the attorney of record will be authorized following transfer to the execution holding cell.

IV. Media Relations


- A. The Superintendent/designee will coordinate all requests for information concerning an execution.
 1. A single event to provide representatives of major and local media an opportunity to access the chamber will be authorized by the Superintendent and coordinated by designated staff.
- B. The Superintendent will establish procedures for selecting media witnesses as specified in the Witness Selection section of this policy.
 1. No audio/electronic/video equipment, cameras, telephones, or recording/communication devices will be permitted in the chamber. Media witnesses will be subject to an electronic and pat search. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.
 2. The only items that are allowed in the chamber are pens, pencils, and writing tablets supplied by the facility.
- C. Requests from media representatives for access to the Information Center must be submitted in writing.

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	REVISION DATE 10/25/08	PAGE NUMBER 5 of 12	NUMBER DOC 490.200
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1. Information Center access will not be permitted more than 3 hours prior to an execution.
- D. Media access to a designated area of the facility parking lot will be permitted at a designated time the day prior to the execution.
- E. Media will not be permitted to film or conduct interviews with facility staff without the prior authorization of the Superintendent/designee.
- F. All normal facility security procedures will apply. Failure to comply with these procedures, Department policies, operational memorandums, or directions from authorized personnel may be cause for removal from the facility and/or facility grounds. The Superintendent may establish emergency rules and procedures.

V. Witness Selection


- A. Not less than 20 days prior to an execution, individuals who wish to attend and witness the execution must submit a letter of request (e.g., application) to the Superintendent. The letter must designate the relationship to the ISDP and reason(s) for wishing to attend. Eligible individuals include:
 1. Judicial officers (i.e., the Judge who signed the Death Warrant for the ISDP, the current Prosecuting Attorney or a Deputy Prosecuting Attorney of the county from which the final Judgment and Sentence and Death Warrant were issued, and the most recent attorney of record representing the ISDP),
 2. Law enforcement representatives (i.e., officers responsible for investigating the crime for which the inmate was sentenced to death),
 3. Media representatives,
 4. Representatives of the families of the victims (i.e., immediate family or victim advocates of the immediate family), and
 5. Representatives from the ISDP's immediate family.
- B. Not less than 15 days prior to the execution, the Superintendent shall determine the total number of individuals, other than Department employees, who will be allowed to attend and witness the execution.
 1. The Superintendent shall determine the number of witnesses allowed in each category of eligible individuals.

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	REVISION DATE 10/25/08	PAGE NUMBER 6 of 12	NUMBER DOC 490.200
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- a. No less than 5 media representatives will be included, with consideration given to news organizations serving communities affected by the crimes or the execution.
 - b. Up to 2 law enforcement representatives will be included. The chief law enforcement officer of the jurisdiction where the crime was committed shall designate the law enforcement representatives.
2. Once the list is composed, the Superintendent shall serve the list on all parties who have submitted a letter (e.g., application) to witness the execution.
- C. Not less than 10 days prior to the execution, the Superintendent shall file the witness list with the Superior Court from which the conviction and Death Warrant were issued. The witness list will be filed with a petition asking that the court enter an order certifying the list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than 5 days after the filing of the petition.
 - D. Unless a show cause petition is filed with the Superior Court from which the conviction and Death Warrant were issued within 5 days of the filing of the Superintendent's petition, the Superintendent's list, by order of the Superior Court, will become final and no other party will have standing to challenge its appropriateness.
 - E. In no case may the Superintendent or the Superior Court order or allow more than 17 witnesses to a planned execution, excluding required staff.
 - F. All witnesses must adhere to the facility's search and security provisions in regards to witnessing an execution and may be subject to emergency rules and procedures. Written consent for search will be required using DOC 21-575 Acknowledgment of Visitor Search Requirements.

VI. Execution Holding Cell

- A. Prior to the execution, but no sooner than 24 hours before, the ISDP will be moved to the execution holding cell.
- B. The holding cell will contain:
 1. Bedding that includes a mattress, 2 sheets, 3 blankets, a pillow, and a pillow case,
 2. Personal hygiene items that include 2 towels, a washcloth, and a bar of soap,

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
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3. Approved personal items and clothing that include underwear, facility clothing, legal materials, religious items, jewelry, or other personal items as requested by the ISDP and approved by the Superintendent, and
4. Other personal items as requested by the ISDP and approved by the Superintendent to be retained by holding cell staff and issued as requested by the ISDP.


- C. A female ISDP may be housed in the WSP Intensive Management Unit (IMU) prior to being moved to the execution holding cell.
- D. Two correctional staff will be posted at the holding cell at all times and a complete log of activities will be maintained.

VII. Final Meal

- A. At the meal period just prior to the time of execution, the ISDP will be allowed to provide his/her meal selection from a menu prepared and provided by the Food Service Manager. The Food Service Manager will ensure preparation and delivery of the meal to the ISDP.

VIII. Execution Preparation

- A. The Superintendent will appoint individuals to support the execution process.
 1. No staff will be required to participate in any part of the execution procedure.
 2. Briefings and rehearsals will be conducted as necessary to ensure adequate preparation for the execution. For an execution by lethal injection, there shall be a minimum of 3 practice sessions preceding an execution that shall include the siting of intravenous (IV) lines.
- B. Medical Review
 1. A physical examination of the ISDP may be conducted to determine any special problems (e.g., collapsed veins, obesity, deterioration of bone or muscular structure) that may affect the execution process. The ISDP's height and weight will be measured during the examination.
 2. Based upon the physical examination, the Superintendent may consult with appropriate experts to determine whether deviation from the policy is advisable to ensure a swift and humane death.
- C. Crowd Control


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1. The Superintendent will notify law enforcement agencies of the date of execution, enabling them to prepare for any traffic and crowd control issues that may arise.
2. Prior to the execution, the Superintendent will hold briefings for local and state law enforcement agencies to determine the manner and extent to which WSP and Department resources will support law enforcement in managing crowd control and potential external threats.
3. An area(s) will be designated for the general public.
4. The WSP Emergency Response Team (ERT) will provide crowd control for the protection of the WSP grounds.
 - a. The ERT Commander(s) will be briefed by the Superintendent prior to the execution.
 - b. In the event that protesters and/or onlookers gather, law enforcement assistance will be requested to direct them to the designated area.


IX. Execution Procedure

A. Lethal Injection

1. Lethal Injection Materials/Personnel
 - a. All tubing, syringes, saline solution, and other apparatus will be on site and verified no later than 7 days prior to the execution.
 - b. The Superintendent will direct the acquisition of the appropriate quantities of lethal substances. These will be available and on site 7 days prior to the execution date.
 - c. The Superintendent will ensure the security and continued verification of all materials.
 - d. Lethal Injection Team members will have sufficient training or experience to carry out the lethal injection process without any unnecessary pain to the ISDP. Minimum qualifications include one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation.
2. Lethal Injection Table

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- a. The Superintendent, in conjunction with the Plant Manager, will examine and verify that the lethal injection table is in working order with all restraints available.
3. Preparation of the Execution Area
 - a. The Lethal Injection Team will inspect the area designated for lethal injection and make any final recommendations to the Superintendent.
 - b. The Lethal Injection Team will assemble all necessary materials for transport to the chamber no less than one hour prior to the time of execution. The Lethal Injection Team Leader will secure the lethal substances and personally transport them to the chamber.
 - c. The solutions for injection will be prepared not more than 30 minutes prior to administration.
4. Execution Process
 - a. The Superintendent will direct that the ISDP be brought to the chamber. The Escort Team will place the ISDP on the lethal injection table and appropriately secure the ISDP to the table. The Escort Team will then leave the room.
 - b. The Lethal Injection Team will establish 2 IV lines and start a normal flow of saline through each line. The Lethal Injection Team will ensure that a slow, normal saline flow is maintained through each line.
 - c. The Superintendent will ask the ISDP if s/he has any last words.
 - d. Upon notification from the Superintendent, the Lethal Injection Team will introduce the following lethal solutions using a bolus injection into the tubing in the order specified:
 - 1) 3 g thiopental sodium
 - 2) 50 cc normal saline
 - 3) 100 mg pancuronium bromide
 - 4) 50 cc normal saline
 - 5) 240 mEq potassium chloride (KCl)
 - e. Either line may be used for injection of solutions as required. The Superintendent shall observe the ISDP for signs of consciousness before the Lethal Injection Team administers the pancuronium

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bromide. If the Superintendent observes that the ISDP is conscious following the first dose of thiopental sodium, s/he shall direct the Lethal Injection Team to administer an additional 3 g dose of thiopental sodium.

- f. The Lethal Injection Team Leader will signal the Superintendent when all of the solutions have been administered.
- g. At a time deemed appropriate by the Superintendent, the curtains will be closed. The Superintendent will call for the physician to examine the body and make a pronouncement of death.
- h. After the pronouncement of death, the Lethal Injection Team will remain in the area until directed to leave.
- i. Post-execution procedures will be followed.

B. Hanging

1. The gallows area trap door(s) and release mechanisms will be inspected for proper operation.
2. A determination of the proper amount of drop of the ISDP through the trap door will be made. The following standard military execution drop chart will be used:

<u>WEIGHT (Pounds)</u>	<u>DROP DISTANCE</u>
120	8'1"
125	7'10"
130	7'7"
135	7'4"
140	7'1"
145	6'9"
150	6'7"
155	6'6"
160	6'4"
165	6'2"
170	6'0"
175	5'11"
180	5'9"
185	5'7"
190	5'6"
195	5'5"

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200	5'4"
205	5'2"
210	5'1"
220 and over	5'0"

3. Equipment

- a. Hood – The hood will be a neutral color with an outer surface made of rough material, split at the open end so that it will come down over the chest and back.
- b. Collapse Board – A board will be provided for use in case the ISDP collapses.
- c. Restraints – Restraints will be used to ensure that the hands and arms of the ISDP are securely held to his/her front and sides.
- d. Rope – The rope will be manila hemp, at least ¾ inch and not more than 1¼ inches in diameter and approximately 30 feet in length. The rope will be soaked and then stretched while drying to eliminate any spring, stiffness, or tendency to coil. The knot will be treated with wax, soap, or clear oils ensuring a smooth sliding action through the knot. The knot will be tied according to Army regulations.

4. Execution Process

- a. Restraints will be placed on the ISDP by assigned staff.
- b. The Escort Team will escort the ISDP to the gallows area. The ISDP will be placed, standing, in the spot designated by the Superintendent. The Superintendent will ask the ISDP if s/he has any last words.
- c. The hood will be placed on the ISDP and leg restraints applied. If a collapse board appears to be necessary, the Escort Team will put the board in place.
- d. The noose will be placed snugly around the ISDP's neck in such a manner that the knot is directly behind the left ear.
- e. The Superintendent will direct the trapdoor be released.
- f. The Escort Team will move to the lower floor location to assist with removal of the deceased ISDP. The curtains will be closed.

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- g. At a time deemed appropriate by the Superintendent, the physician will be called to make a pronouncement of death.

X. Post-Execution Procedure

- A. The Assistant Secretary for Prisons will notify the Secretary and Incident Command Center of the time of death. Necessary calls to Headquarters will be made to the Department Emergency Operations Center.
- B. The Superintendent will inform a designated staff of the time of death, who will then inform the witnesses.
- C. The witnesses will be escorted out of the execution area immediately after the pronouncement of death.
- D. The media witnesses will be escorted to the Information Center.
- E. The Chaplain will provide official notification to the family of the time of death.
- F. The body will be removed from the facility by a pre-determined route.
- G. A post-trauma specialist and the Chaplain will be available to staff preceding, during, and after the execution. Staff will also be provided a confidential list of off-site locations where counseling and/or spiritual support will be available.
- H. Within 20 days after the execution, the Superintendent shall return the Death Warrant to the clerk of the trial court from which it was issued, along with the log identified in the Pre-Execution Procedure section of this policy.

DEFINITIONS:

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

ATTACHMENTS:

Execution Procedures and Assignments Checklist (Attachment 1)

DOC FORMS:

DOC 21-575 Acknowledgment of Visitor Search Requirements

**DEPARTMENT OF CORRECTIONS
WASHINGTON STATE PENITENTIARY
EXECUTION PROCEDURES AND ASSIGNMENTS CHECKLIST**

Inmate:

Date of Execution:

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
Compliance Date: Approximately 30 days prior to the scheduled execution		
	Superintendent appoints an Execution Incident Commander.	
	Execution Incident Commander determines the Incident Command System (ICS) objectives, strategies, tactical direction, and organizational structure needed for the execution event and identifies planning elements required.	
	Execution Incident Commander develops a draft Incident Action Plan (IAP) for the execution and submits to the Superintendent for approval. The IAP will contain, at a minimum, all elements identified in this checklist.	
	ISDP is informed of the statutory requirements regarding the method of execution and is advised the Superintendent will request s/he submit his/her election of alternate method in writing.	
	ISDP is given opportunity to designate family members as witnesses.	
	ISDP has been provided a written summary of the procedures governing mail, visitation, telephone use, and available religious services.	
	Mail Room Supervisor is informed, in writing, of the ISDP's name and execution and instructed that: <input type="checkbox"/> All incoming mail addressed to ISDP will be forwarded unopened to a designated Associate Superintendent <input type="checkbox"/> A log will be maintained of all incoming/outgoing mail noting date and time of receipt and distribution <input type="checkbox"/> A separate log will be maintained for legal mail	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	The facility Public Information Officer has been informed of scheduled date and directed to prepare a media plan.	
	The Intensive Management Unit (IMU) Manager has been informed of mail, visit, telephone use, and available religious services as they apply to the ISDP.	
	ISDP is placed on 30 minute check. Observed behavior is entered in designated log.	
	Chaplain is assigned as Religious Specialist and briefed.	
	Sources and procedures for acquiring the substances necessary for lethal injection have been investigated. Plans being made for acquiring all necessary equipment essential to carry out either mode of execution.	
	Coordination meeting with local law enforcement is scheduled.	
	Lethal Injection Team or Hanging Team, as necessary, is identified and notified.	
	Individuals eligible to witness execution are identified. Appropriate letters sent.	
Compliance Date: Not less than 20 days prior to the execution		
	Superintendent completes changes to IAP and returns to the Execution Incident Commander.	
	Staff assigned an organizational role within the ICS structure are identified and briefed.	
	ICS organization completes identified planning elements, required forms, and documentation for the IAP.	
	Letters received from potential witnesses have been processed.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	<p>The chamber has been inspected to ensure the following systems are functional:</p> <p> <input type="checkbox"/> Plumbing <input type="checkbox"/> Lighting <input type="checkbox"/> Emergency Lighting <input type="checkbox"/> Mechanical Systems <input type="checkbox"/> Locking Systems <input type="checkbox"/> Telephones <input type="checkbox"/> Sanitation <input type="checkbox"/> Furnishings <input type="checkbox"/> Toilet Facilities </p>	
	Execution Incident Commander ensures all staff assigned to positions within the chamber receive a briefing and notification of the date and time of "on-site" rehearsal.	
	Execution Incident Commander ensures a written report detailing the condition of the chamber has been submitted to the Superintendent citing any deficiencies. A schedule of corrective actions will be provided.	
Compliance Date: 15 days prior to the execution		
	All changes, improvements, or renovations to the chamber have been completed.	
	Total number of individuals to attend/witness the execution, other than staff, has been identified.	
	Witness applicants have been notified of the final witness list.	
Compliance Date: 14 days prior to execution		
	ISDP is authorized one additional hour of yard time each day.	
	ISDP is provided final opportunity to choose alternate method of execution.	
	All equipment has been procured for either mode of execution.	
	Notification to staff/ISDP for program changes if needed (e.g., visiting, etc.).	
	Arrangements made to ensure Death Certificate will be available. Superintendent is advised.	
Compliance Date: Not less than 10 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	List of authorized witnesses is filed with Superior Court in county of conviction from which Death Warrant issued.	
	Physical examination is conducted, if needed.	
	The following have been checked: <input type="checkbox"/> All equipment required for lethal injection <input type="checkbox"/> All equipment required for hanging, if necessary.	
	Conduct at least 3 lethal injection practice sessions, if necessary, including siting of IV lines.	
	Gallows area trap door(s) and release mechanisms are inspected for proper operation, if necessary.	
	Proper amount of drop of ISDP through the trap door is determined, if necessary.	
	IAP specifically details crowd control strategies and tactics and identifies the operational supervisor/leader.	
Compliance Date: 7 days prior to the execution		
	Execution Incident Commander submits final IAP to the Superintendent and receives signature approval.	
	ISDP is authorized daily visits (in addition to with attorney of record).	
	Instructions are provided to staff on entrance and egress routes.	
	Mobile restroom facilities are placed in the designated demonstration area.	
	Post-execution handling of ISDP is coordinated.	
	Lethal solutions, if required, have been obtained and placed in security lock box.	
	The specific route and mode of body removal is determined and information transmitted to: <input type="checkbox"/> Superintendent <input type="checkbox"/> Execution Incident Commander <input type="checkbox"/> Captain <input type="checkbox"/> Shift Commander <input type="checkbox"/> Washington State Patrol	
	Menu for final meal is prepared and presented to Superintendent for approval.	
Compliance Date: Approximately 5 days prior to the execution		

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	On-site rehearsal has been conducted with all Execution Event staff participating.	
	The holding cell area has been inspected and is ready for occupancy.	
	Security inspections of the entire chamber have been conducted.	
	The holding cell is prepared and equipped with: <input type="checkbox"/> 1 Mattress <input type="checkbox"/> 2 Sheets <input type="checkbox"/> 3 Blankets <input type="checkbox"/> 1 Pillow <input type="checkbox"/> 1 Pillowcase <input type="checkbox"/> 2 Towels <input type="checkbox"/> 1 Washcloth <input type="checkbox"/> 1 Bar of Soap	
	Chamber and all systems have been checked for operation and readiness. All equipment present and functional.	
	Notices are issued to any contract/volunteer staff and/or construction workers of planned suspension of their activities.	
	Arrangements for Death Certificate are confirmed and communicated to the Superintendent/Execution Incident Commander.	
Compliance Date: Approximately 4 days prior to the execution		
	Coordination briefings with local law enforcement agencies have been conducted.	
	All staff assignments made: <input type="checkbox"/> Chamber Security Team <input type="checkbox"/> Correctional Program Managers <input type="checkbox"/> Captain <input type="checkbox"/> Chamber Media Escort Team <input type="checkbox"/> Visiting Room Media Monitor <input type="checkbox"/> Chaplain <input type="checkbox"/> Transport/Restraining Team <input type="checkbox"/> Holding Cell Security Team <input type="checkbox"/> Health Care Manager 2 <input type="checkbox"/> Incident Command Post Staff (Security/Communication) <input type="checkbox"/> Specialty Team Group Supervisor/ERT Leader <input type="checkbox"/> Specialty Team Group Supervisor/SERT Leader	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Staff escorts assigned for all non-WSP individuals attending.	
Compliance Date: 24 hours prior to execution		
	Superintendent approves all visitors.	
	ISDP is requested to designate disposition of his/her property/remains in writing.	
	A thorough security inspection of the entire chamber area, including search of cells, has been conducted.	
	Clocks are coordinated.	
	ISDP is moved from IMU to holding cell. Visitors limited to approved clergy and attorney of record.	
	Upon arrival at the holding cell, ISDP is informed of conditions of confinement.	
	The IAP is initiated and Incident Command Post opened and staffed.	
	Main facility is briefed at roll call of extraordinary security measures.	
	A designated staff to operate PBX reports for work.	
Execution Day		
	Chamber Access Security Team (Shift A) reports to duty station in chamber.	
	Cell Security Team (Shift A) reports to duty station in chamber.	
	Lethal solutions, if needed, are transferred to the injection room in the chamber.	
	Final meal is prepared and served to ISDP.	
	Chamber Access Security Team Shift B relieves Shift A.	
	Cell Security Team Shift B relieves Shift A.	
	Authorized media representatives are allowed access to the facility and are briefed by the Superintendent/designee.	
	All witnesses have been assigned escorts and allowed access to the facility.	
	All traffic through information desk area, visitor tunnel is cleared.	
	All staff designated as participants are at duty stations in the chamber.	

DATE COMPLETED/ STAFF INITIALS	TASK	ASSIGNED PERSONNEL
	Department Secretary has been contacted by telephone from the Incident Command Post/Communications Center and an open line from the Department Emergency Operations Center to the chamber is established.	
	Incident Command Post/Communications Center contacts the Attorney General's Office by telephone and maintains an open line.	
	Lethal Injection Team enters and the equipment for injection mode and back-up equipment is tested, if necessary.	
	Hanging Team enters the gallows area and the equipment and back-up equipment is tested, if necessary.	
	Open line participants verify and concur no stay has been received. The time is _____ or later and the execution is to proceed.	
	Superintendent is in place in chamber.	
	ISDP is placed in restraints and escorted to the appropriate execution area.	
	All pre-execution preparations are completed. All participants are in place.	
	Assistant Secretary confirms that no stays have been granted.	
	Assistant Secretary informs Superintendent that there are no stays.	
	Superintendent signals the execution to proceed.	

EXHIBIT 9

DECLARATION OF DAN J. PACHOLKE

I, DAN J. PACHOLKE, make the following declaration:

1. I am currently employed as the Prison Administrator for the Department of Corrections (DOC). As the Prison Administrator, I supervise the operation of a number of Washington State prisons, including the Washington State Penitentiary (WSP). I am over the age of eighteen and competent to testify as a witness. The declaration set forth below is based on my personal knowledge.

2. Before I became the Prison Administrator, I was a prison superintendent at the following DOC prison facilities: Cedar Creek Corrections Center (2003-2006), Stafford Creek Correction Center (2007-2008), and interim superintendent at the Monroe Correctional Complex (2008). I have worked for DOC for 26 years.

3. As the DOC Prison Administrator, I supervise the WSP Superintendent, Stephen Sinclair. I am familiar with DOC Policy 490.200, Capital Punishment.

4. Superintendent Sinclair has reported to me that each member of the lethal injection team has sufficient training or experience to carry out the lethal injection process without any unnecessary pain to Mr. Stenson. Superintendent Sinclair has reported to me the individual team members who will assist in the execution by lethal injection will each have one or more years of professional experience as a certified Medical Assistant, Phlebotomist, Emergency Medical Technician, Paramedic, military corpsman, or similar occupation, as required by DOC Policy 490.200, Directive IX(A)(1)(d).

5. Pursuant to the requirements of DOC Policy 490.200, Directive VIII(1)(2) practice sessions have been conducted at WSP in anticipation of Mr. Stenson's scheduled execution. I have been present during at least two sessions for lethal injection and two sessions for hanging.

6. Regarding lethal injection, I attended two practice sessions on October 14, 2008, in the execution chamber at WSP. Each of these sessions involved a full walk-through of the

EXHIBIT 9

entire lethal injection process and the insertion of intravenous lines in both arms of two individuals. The lethal injection process includes the escorting in of the inmate subject to the death penalty, the placing of this person on the table, and the insertion of the intravenous lines. In one practice session, I assumed the role of the inmate subject to the death penalty. I was placed on the gurney in the execution chamber and strapped to the gurney. From there, I observed the actions of the lethal injection team. In the other practice session, I assumed the role of the superintendent while Superintendent Sinclair assumed the role of the inmate subject to the death penalty. Again, I observed the actions of the lethal injection team. In both practice sessions, two separate intravenous lines were inserted into either my arms or the arms of Superintendent Sinclair, one intravenous line on each arm, and flows of saline were initiated. Thereafter, members of the lethal injection team went through the tasks of simulating the application of the substances called for under the DOC Policy 490.200, sodium thiopental, pancuronium bromide, and potassium chloride. When I assumed the role of an inmate, I felt little or no pain during the practice session. The insertion of the needle and catheter occurred very much like when I have given blood. The lines were inserted with no apparent difficulty. I also observed nothing indicating that Superintendent Sinclair experienced any pain as the intravenous lines were inserted into his arms during the practice session in which he assumed the role of the inmate. Lethal injection team members performed their respective roles without any apparent difficulty. They all appeared to know their assignments and performed them without any difficulty.

7. I attended two practice sessions for hanging on October 19, 2008, at WSP. During both sessions, I was present on the upper floor of the execution chamber where the inmate subject to the death penalty would be escorted prior to an execution by hanging. In each of the practice sessions I witnessed, a mannequin was "dropped" through the trap door. Both practice sessions occurred without any difficulty and the steps leading up to and including the execution occurred according to DOC Policy 490.200.

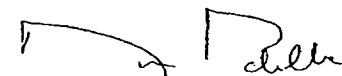
8. In the practice sessions involving the mannequin, the noose was placed tightly around the mannequin's neck with the noose knot directly behind the mannequin's left ear and the running part of the noose (or the loop) placed in the front of the mannequin's neck. After the noose has been securely placed, the trap door is opened and the mannequin falls through and the rope is extended to five full feet. In each of these sessions, the hanging mechanisms functioned without error or incident.

9. Based on my observations of the execution practice sessions discussed above and on my conversations with Superintendent Sinclair, I observed nothing indicating any inability by either the execution team or Superintendent Sinclair in carrying out DOC Policy 490.200.

10. I will be present in the execution chamber during Mr. Stenson's execution and will ensure that DOC Policy 490.200 is followed.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 1 day of November, 2008, at Olympia, Washington.



DAN J. PACHOLKE